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SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMLERS
AND FUNERAL DIRECTORS AND SHELBY FUNERAL HOMES, INC.

Shelby Funeral Homes, Inc. (Shelby) and the State Board of Embalmers and Funeral Directors (Board) enter into this Settlement Agreement for the purpose of resolving the question of whether Shelby's funeral establishment license, No. 001576, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo Cum. Supp. 2008. The Board and Shelby jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Cum. Supp. 2008.

Shelby acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against it at the hearing; the right to present evidence on its behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against it; the right to a ruling on questions of

¹All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

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law by the Administrative Hearing Commission; the right to a disciplinary hearing before the Board at which time Shelby may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the Board.

Being aware of these rights provided to it by law, Shelby knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to it.

Shelby acknowledges that it has received a copy of documents that were the basis upon which the Board determined there was cause for discipline, along with citations to law and/or regulations the Board believes were violated. Shelby stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Shelby's license as a funeral establishment, License No. 001576, is subject to disciplinary action by the Board in accordance with the relevant provisions of Chapter 621, RSMo Cum. Supp. 2008, and Chapter 333, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the Board and Shelby in Part II herein is based only on the agreement set out in Part I herein. Shelby understands that the Board may take further disciplinary action against it based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

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I.
Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the Board and Shelby herein jointly stipulate to the following:

1. The State Board of Embalmers and Funeral Directors is an agency of the State of Missouri, created pursuant to § 333.111, RSMo 2000, for the purpose of maintaining standards of service and practice to be followed in the professions of embalming and funeral directing.
2. The Board is charged with enforcing the provisions of Chapter 333 pursuant to § 333.121, RSMo 2000.
3. Shelby holds a Missouri funeral establishment license, No. 001576. Shelby's license is and was at all times material herein current and active.
4. Charles R. Penrod (Penrod) is President of the funeral establishment, Shelby, and Shelby is under Penrod's general direction and supervision.
5. On or about January 2, 2007, the Board sent Penrod a letter that Shelby needed to promptly bring its corporate status current within 30 days of the date of its letter or the Board might refer this matter to the Attorney General's Office for official discipline.
6. On or about March 2, 2007, the Board sent a certified letter to Penrod informing him that Shelby had not been registered with the Secretary of State and Penrod had 30 days to inform the Board, in writing, that this matter had been resolved.

7. On or about April 9, 2007, and April 12, 2007, respectively, the Board sent a letter informing Penrod that Shelby as a “dissolved corporation cannot practice the licensed profession, other than to wind up its affairs.” Penrod was asked to notify the Board within the next 30 days of the action that Penrod planned to take to resolve this matter. The Board further stated that “failure to resolve this matter may result in disciplinary action to terminate your license.”

8. On or about May 14, 2007, the Board received a letter from Penrod stating that he had contacted his accountant regarding Shelby’s corporate status and that he was in the process of completing the necessary documents to resolve this matter.

9. On or about June 14, 2007, the Board sent a memorandum to Penrod regarding Shelby’s registration status with the Secretary of State’s Office. The Board requested that Penrod inform them of the steps that were being taken to ensure Shelby’s proper registration with the Secretary of State’s Office.

10. On or about October 1, 2007, the Board sent a certified letter to Penrod requesting his personal appearance at its December 3, 2007 board meeting to discuss Shelby’s corporate status.

11. On or about November 16, 2007, the Board received a letter from Penrod stating that due to his daughter’s graduation from mortuary science school he would not be able to attend the Board’s December 3, 2007 meeting. In this same letter, Penrod asked for a 60- to 90-day extension to address Shelby’s delinquent corporate status.

12. On or about February 8, 2008, the Board received a letter from Penrod regarding the corporate status of Shelby. In this letter, Penrod stated that he had to hire his "old accountant back since the other one was doing nothing." He again requested a 60- to 90-day extension. Penrod also attached a letter from the Department of Revenue outlining reasons that a tax clearance letter could not be issued to Shelby.

13. On or about June 16, 2008, the Board sent Penrod a certified letter requesting that Penrod appear at its August 19, 2008 board meeting to discuss the matter of Shelby's corporate status.

14. On or about August 25, 2008, the Board sent a letter to Penrod acknowledging his appearance at the August 19, 2008 board meeting. The Board requested the following from Penrod:

[A] detailed letter reporting the status of your dissolved corporation and within the next thirty (30) days. If the dissolved corporation status has not been resolved in that time period, update letters will be required every thirty days. The board may request a future appearance before the Board if necessary.

15. On or about October 14, 2008, the Board received a faxed update letter from Penrod. In his letter, Penrod stated that he was trying to come up with the money to pay an accountant to resolve the issue of Shelby's lack of corporate status.

16. On or about December 1, 2008, Penrod e-mailed the Board regarding Shelby's corporate status. Penrod's letter stated the following: "Lori; please advise the board and

mrs. [sic] dunn that I am working on the status of the corporation but do need to have some of the \$38,000.00 owed from N.P.S. to pay the accounts to finish the process.”

17. On or about December 11, 2008, the Board sent Penrod a letter requesting the following:

[A]n affidavit of the owner of the business entity and a detailed letter reporting the status of your dissolved corporation and within the next thirty (30) days. If the dissolved corporation status has not been resolved in that time period, update letters will be required every thirty days. The board may request a future appearance before the Board if necessary.

18. On or about January 14, 2009, Penrod e-mailed the Board regarding the progress he was making to correct his corporate status with the Secretary of State’s Office. Penrod stated that he finally had enough money to finish the tax filing and that it would take about six weeks to complete everything.

19. On or about February 18, 2009, the Board e-mailed Penrod requesting an update on Shelby’s corporate status.

20. In a letter dated March 22, 2009, Penrod wrote to the Board and stated the following: “As of this week we have one year for the re-filing to reinstate the corporation. He says we have two more years to complete and this should not take long after the April 15 deadline that he has for the other clients that he takes care of.”

21. To date, Shelby has failed to update its corporate status with the Secretary of State’s Office.

22. Cause exists to discipline Shelby's Missouri funeral establishment license pursuant to § 333.121.2(6), RSMo, which provides:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

. . . .

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter[.]

23. Penrod's failure to timely update Shelby's corporate status violates 20 CSR 2120-2.070(6) which states in pertinent part:

Each application for a funeral establishment shall be made in the name of the person or business entity authorized to conduct business in Missouri. No license shall be issued to an establishment that has no legal recognition. A Missouri licensed funeral establishment shall maintain a current and active authorization to conduct business in Missouri with the Missouri Secretary of State.

II.
Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 536.060, RSMo, and §§ 621.045.3 and 621.110, RSMo Cum. Supp. 2008.

1. **Shelby's license is on probation.** Shelby's funeral establishment license, No. 001576, shall be placed on PROBATION for a period of two years (the disciplinary period).

2. During the disciplinary period, Shelby shall be entitled to operate as a funeral establishment, provided that it adheres to all of the following terms and conditions:

A. Shelby, on or before December 31, 2009, shall have restored its corporate status to be in good standing with the Secretary of State's Office. Shelby shall at the same time send the Board copies of any and all documents from the Secretary of State's Office that confirm that Shelby's corporate status is in good standing with the Secretary of State's Office.

B. Shelby shall keep the Board apprised at all times in writing of its current business address and telephone number, and Penrod shall keep the Board apprised at all times in writing of his current home and work addresses and telephone number at each place of business. Shelby and Penrod, respectively, shall provide the Board with written notification within ten days of any change in this information.

C. Shelby and Penrod shall timely renew all board-issued licenses and registrations and timely pay all fees for these renewals and comply with all other requirements to maintain their licenses and registrations in a current and active state.

D. Shelby and Penrod shall annually renew its corporate status with the Secretary of State's Office on or before the deadline set forth by the Secretary of State.

E. If, at any time within the disciplinary period, Shelby and/or Penrod change residence and/or place of business from the State of Missouri; cease to be currently licensed under the provisions of Chapter 333 and Chapter 436; or fail to keep the Board advised of all current places of business and/or residence, the time of absence, or unlicensed status or unknown whereabouts, shall not be deemed or taken as any part of the disciplinary period.

F. Shelby and Penrod shall comply with all provisions of Chapter 333, RSMo; Sections 436.005 through 436.071, RSMo; all rules and regulations of the Board; and all state and federal laws related to the performance of duties in the funeral industry.

G. Penrod and/or an agent of Shelby's shall appear before the Board or its representatives upon the Board's request.

H. Shelby and Penrod shall accept and cooperate with unannounced visits from the Board's duly authorized representative to monitor their compliance with these terms and conditions.

I. Shelby and Penrod shall submit written reports to the Board by no later than January 1 and July 1 during each year of the disciplinary period stating truthfully

whether there has been compliance with all terms and conditions of this Settlement Agreement.

3. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any future violations by Shelby of Chapter 333, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

4. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the Board or may be discovered.

5. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

6. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

7. The parties to this Settlement Agreement understand that the Board will maintain this Settlement Agreement as an open record of the Board as required by Chapters 333, 610, and 620, RSMo, as amended.

8. Shelby together with its partners, shareholders, officers, directors, heirs, assigns, agents, employees, representatives, and attorneys, does hereby waive, release, acquit, and forever discharge the Board, its respective members, employees, agents, and attorneys including former members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs, expenses, and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

9. Shelby understands that it may, either at the time the Settlement Agreement is signed by all parties, or within 15 days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Shelby's license. If Shelby desires the Administrative Hearing Commission to review this Settlement Agreement, Shelby may submit its request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 West High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

10. If Shelby requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Shelby's license. If Shelby does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Board.

LICENSEE

*Shelby Funeral Homes
Charles R. Penrod*

Shelby Funeral Homes, Inc.
By Charles R. Penrod

Date 12/3/09

STATE BOARD OF EMBALMERS AND
FUNERAL DIRECTORS

Becky Dunn

Becky Dunn, Executive Director

Date 12/15/09

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